

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

AMBER IVEY

1613 East 33rd Street

Baltimore, Maryland 21218

Plaintiff,

v.

LINDA H. LAMONE, in her

Official Capacity as

State Administrator of Elections

Maryland State Board of Elections

151 West Street, Suite 200

Annapolis, Maryland 21401-0486

Defendant.

Civil Action No. _____

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**VERIFIED COMPLAINT FOR INJUNCTIVE RELIEF,
DECLARATORY RELIEF, AND OTHER RELIEF**

Amber Ivey, by her attorney, hereby files the following Verified Complaint for Injunctive Relief, Declaratory Relief, and Other Relief against Linda H. Lamone, in her Official Capacity as State Administrator of Elections, Maryland Board of Elections, and alleges:

INTRODUCTION

1. This action seeks to vindicate rights protected by the First and Fourteenth Amendments to the U.S. Constitution, and is brought under 42 U.S.C. § 1983. This Court has jurisdiction over this civil rights action under 28 U.S.C. §§ 1331 and 1343. This Court also has jurisdiction under 28 U.S.C. §§ 2201 and 2202 to declare the rights of the parties and to grant all further relief found necessary and proper.

2. Venue is proper in the Northern Division, District of Maryland pursuant to 28 U.S.C. § 1391(a) because the defendant is subject to personal jurisdiction within the Northern Division, District of Maryland and the events that give rise to this action occurred within the Northern Division, District of Maryland.

PARTIES

3. Amber Ivey (“Ivey”) is a Maryland registered voter and has filed a Declaration of Intent to seek nomination for the office of the United States of Representative from Maryland’s Seventh Congressional District in the November 2020 General Election.

4. Linda H. Lamone (“Administrator Lamone”), is State Administrator of Elections, Maryland Board of Elections (“State Board” or “SBE”), and the Plaintiff brings this action against her in her Official Capacity.

FACTS

5. Maryland Code, Election Law (“EL”) § 5-703(c) requires that a candidate for public office who seeks nomination by petition must file a Declaration of Intent to seek nomination by petition no later than the first Monday in July in an election year. The first Monday in July in 2020 is July 6, 2020.

6. Ms. Ivey has filed a timely Declaration of Intent to seek nomination for the office of the United States of Representative from Maryland’s Seventh Congressional District in the November 2020 General Election

7. EL §§ 5-703(d), 5-703(e), and 5-703(f) require that Ms. Ivey submit petition signatures from 1% of the total number of registered voters who are eligible to vote for the office for which she seeks nomination (*i.e.*, 5,064 signatures) by first Monday in August in the year in which the General Election is held. The first Monday in August in 2020 is August 3, 2020.

8. On February 14, 2020, Ms. Ivey resigned from her job at The Pew Charitable Trusts, a non-partisan organization that requires that employees seeking to run for office to resign) in order to become a candidate for United States Representative from Maryland's Seventh Congressional District.

9. Maryland's Seventh Congressional District includes parts of Baltimore City, Baltimore County and Howard County.

10. On March 11, 2020, Ms. Ivey submitted information to SBE regarding her candidacy.

11. On March 16, 2020, Ms. Ivey emailed SBE in order to find out when she could submit her Declaration of Intent. SBE's website stated that the document had to be submitted in person, but SBE's offices were closed due to COVID-19. Ms. Ivey received a reply from SBE that the document would have to be submitted in person and that she would need to keep checking the website for updates.

12. On March 31, 2020, Ms. Ivey submitted paperwork to the Federal Election Commission in order to create a Candidate Identification and Committee, the Friends of Amber Ivey.

13. On April 3, 2020, the Friends of Amber Ivey launched the campaign for Ms. Ivey's bid for the House of Representatives from Maryland's Seventh Congressional District.

14. On March 5, 2020, Maryland Governor Lawrence J. Hogan ("Governor Hogan") issued a Proclamation declaring a State of Emergency and Existence of Catastrophic Health Emergency due to the COVID-19 pandemic. Governor Hogan renewed his Proclamation declaring a State of Emergency and Existence of Catastrophic Health Emergency on March 17, 2020, April 10, 2020, May 6, 2020, June 3, 2020, and July 1, 2020.

15. Governor Hogan issued subsequent orders closing non-essential businesses, forbidding large gathering of people, and requiring Marylanders to stay at home. The stay at home order was in effect statewide from March 30, 2020 through May 15, 2020. On May 13, 2020, Governor Hogan issued Order 20-05-13-01, which allowed certain businesses to re-open and gatherings to occur. However, Order 20-05-13-01, significantly limited large gatherings and allowed local jurisdictions to impose more stringent orders. Governor Hogan's Order 20-06-10-01, which currently is in effect, continues to strongly recommend that "all Marylanders continue following the most current guidance from CDC and MDH regarding social distancing, including, without limitation, avoidance of large gatherings and crowded places. All of Governor Hogan's COVID-19 pandemic orders can be found at <https://governor.maryland.gov/covid-19-pandemic-orders-and-guidance/>

15. Subsequent to Governor Hogan's issuance of Order 20-05-13-01, Baltimore City, , Baltimore County, and Howard County entered more restrictive orders. Baltimore City was under a stay at home order until June 8, 2020. Further, Baltimore City Mayor Bernard "Jack" Young cancelled all large events in Baltimore City, including Fourth of July fireworks and Artscape, through August 31, 2020.

16. Ms. Ivey and her campaign were unable to collect any in-person petition signatures until June 2020 due to the various stay at home orders imposed by Governor Hogan and local governments.

17. On April 22, 2020, SBE authorized electronic petition signatures for 2020 due to the COVID-19 pandemic. *See* SBE Policy 2020-01.

18. On April 23, 2020, Ms. Ivey requested and purchased voter data from SBE.

19. On May 7, 2020, Ms. Ivey contacted SBE with the following email:

“Hello,

I have a couple of questions about SBE Policy 2020-01:
Temporary Electronic Petition Signature Acceptance. Will SBE
update the website with a form that accepts electronic signatures?
Or is it the responsibility of candidates to create their own? Also,
can an individual serve as their own circulator in the case that a
person is in a home alone?”

20. On May 10, 2020, Mary Wagner from SBE sent the following reply to Ms. Ivey,
with copies to Jared DeMarinis, Donna Duncan, and Natasha Walker:

Dear Ms. Ivey:

Your email has been forwarded to me for response. I apologize for
the delay in answering your questions.

It will be up to the sponsor of the petition effort to use the State
prescribed form to capture the electronic signatures. Yes, an
individual signer can act as their own circulator.

Please let me know if you have any questions. Regards,
Mary

Mary Cramer Wagner

Director, Voter Registration and Petition Division Maryland State
Board of Elections
151 West Street, Suite #200

Annapolis, MD 21401

21. On May 10, 2020, Ms. Ivey sent a follow-up email to Ms. Wagner:

Thank you Mary.

Just making sure I understand. Are you talking about the current
form that is a non-fillable PDF? If so, are you saying that we need
to recreate that form and add the electronic signature?

Thank you

22. On May 14, 2020, Ms. Ivey sent a follow-up email to Ms. Wagner since she did not receive a response from the May 7th or 10th email:

Hello Mary,

Just making sure I understand your previous email. Unaffiliated candidates who are collecting signatures to appear on the November ballot should recreate this form (https://elections.maryland.gov/forms/documents/candidate_petition_form_FINAL.pdf) in a fillable format? Or is there another version of this form that allows individuals to input their information and sign electronically?

Thank you for your help. Have a great day.

Amber

23. On May 15, 2020, Jared DeMarinis from SBE replied to the email with:
“That is the form.”

24. On May 15, 2020, Ms. Ivey replied to Mr. DeMarinis with the following email:

Thank you. My question is, are we expected to take that form and make it where people can enter their information and sign electronically? Right now it is a PDF that doesn't allow inputs.

Thank you for any clarification you can provide.

Amber Ivey

25. On May 15, 2020, Ms. Wagner from SBE also replied to Ms. Ivey's May 15th email with:

“Amber, yes, if that is the method that plan to use to capture signatures, it is up to the sponsor to supply that form.

Thank you,”

26. On May 15, 2020, the Friends of Amber Ivey campaign edited the current

SBE petition to make it fillable and add language about electronic signatures.

27. On May 17, 2020, Ms. Ivey emailed SBE a fillable PDF petition for review.

28. On May 21, 2020, Ms. Ivey emailed Mr. DeMarinis at SBE to inquire about using another format for collecting signatures. The email is below:

Hello Jared,

I see another candidate is using this format to collect signatures. I definitely prefer this method. Does this fall in line with State of Maryland guidelines?

<https://www.wallaceformayor.com/petition/> Thank you,
Amber Ivey

29. By June 2, 2020, the Friends of Amber Ivey campaign had little success collecting signatures with the fillable PDF leading to less than 10 signatures.

30. On June 2, 2020, Ms. Ivey contacted the SBE to follow up on the email requesting an easier to fill out form for electronic signatures:

“Hello,

I know you all are very busy. I just want to get clarification on a second form that I have seen used for petitions. Are you all allowing internet forms that are not PDFs like the one that Bob Wallace (candidate for major) is using? See here: <https://www.wallaceformayor.com/petition/>. Also pictured here:”

31. On June 2, 2020, Ms. Ivey reached out to Andrew Ellis with the following email:

“My name is Amber Ivey and I received your contact information from Owen Silverman Andrews. He said you knew more about the form situation at SBE. Do you know if they are allowing forms like this:

<https://www.wallaceformayor.com/petition/> or are we required to use a fillable version of the current form?

I contacted SBE, but they have not responded yet. Attached is the fillable form that I am using to collect signatures.”

32. On June 2, 2020, Andrew Ellis responded with:

“Hi Amber, this is the platform we are using <https://www.md-petition.com/invite/mgp.php>”

33. On June 2, 2020, the Friends of Amber Ivey campaign reached out to the developer at www.md-petition.com to setup an easier way to collect signatures. The site was setup the same day.

34. On June 10, SBE responded to Ms. Ivey’s June 2, 2020, email stating that the electronic form she shared with SBE likely would be unacceptable.

35. On the morning of June 19, 2020, Baltimore Mayor Jack Young announced that Baltimore City would enter Stage II reopening at 5:00 p.m. on Friday, June 18, 2020.

36. On June 19, 2020, the Friends of Amber Ivey began planning to canvas following Baltimore’s entering Stage II reopening.

37. On June 19, 2020, this Court entered a Consent Judgment in *Maryland Green Party v. Hogan*, Civil Action 20-cv-1253-ELH, that provided for a 50% reduction in the number of petition signatures that the Maryland Green Party and the Libertarian Party of Maryland are required to submit by August 3, 2020, to obtain new party status pursuant to EL § 4-102.

38. On June 24, 2020, Ms. Ivey sent the following email to SBE:

Good morning Administrator Lamone, Deputy Administrator Charlson, and Director DeMarinis,

“I am an Independent Candidate in MD-7, and I have been following the Green And Libertarian Parties’ request to reduce the number of signatures required to appear on the November Ballot.

Like those parties, the actions of the State have limited my ability to collect signatures. Unlike those parties, I am an unaffiliated candidate. I do not have the force of a political machine to challenge my constitutional rights to free speech and political association. Collecting signatures has been especially tricky in Baltimore City, as it is behind the State of Maryland in implementing the phased approach to reopening.

Yesterday, I read that the Green and Libertarian parties were allowed by the State to cut signatures that they are required to collect in half.

(<https://www.marylandmatters.org/blog/ballot-access-requirement-for-green-libertarian-parties-cut-in-half/>)

I know that this settlement was an agreement made with these two parties alone. However, I would like to request that the Maryland State Board of Elections apply the 50 percent reduction to other candidates in federal elections. Are you able to apply the settlement results to my campaign and reduce the number of signatures that I am required to collect to half?

Thank you for your time, and I look forward to hearing from you.”

39. On June 25, 2020, Jared DeMarinis from SBE replied to Ms. Ivey with the following email:

“Dear Ms. Ivey:

Thank you for your email. Absent a court order, the Board of Elections does not have the authority to lower statutory candidate petition signature requirements. As you note, the outcome in the Green and Libertarian Party matter applied only to those parties. Please feel free to contact me if you have any questions.”

40. On June 27, 2020, the Friends of Amber Ivey campaign began going out in Maryland’s Seventh Congressional District to go door-to-door and leave door hangers on doors in the District and to canvas outside of farmers’ markets. Canvassing outside of farmers’ markets is one of the few ways to solicit signatures since most major events have

been cancelled through the end of August 2020.

41. During the month of June 2020, the Friends of Amber Ivey campaign was able to only collect 183 signatures through the online portal notwithstanding active solicitation of signatures through texts and calls to voters, purchased emails, purchased social media ads on Instagram and Facebook, and direct mail.

42. Since July 1, 2020, the Friends of Amber Ivey campaign was able to collect approximately 167 signatures, mostly in person. Although that number dramatically increased with the gradual reopening of Maryland and Baltimore City, people are still very wary to interact with canvassers and this number is significantly lower than what the campaign would expect without the fear of COVID-19.

43. On June 27, 2020, June 28, 2020, and July 5, Ms. Ivey and others canvassed door-to-door for signatures. Most of the time people are not on their porches. However, when approaching porches with individuals, canvassers experienced residents that did not want canvassers to come near them due to COVID-10; residents specifically asked canvassers not to come on their porches.

44. On July 4, 2020, and July 5, 2020, Ms. Ivey and another person canvassed at farmers' markets. During the canvassing at farmers' markets, a large number of people went around the canvassers in order to keep 6 feet distance from the petition station. When the canvassers said good morning to individuals at the farmers' markets, a large majority did not speak back.

45. On July 4, 2020, while canvassing, two paid canvassers from the Bob Wallace (Independent running for Mayor in Baltimore City) campaign approached Ms. Ivey at her petition station. They had clipboards and expressed to her how hard it was to walk up to

people to get them to sign the petition. Ms. Ivey told them that she put a table to reduce the threat people feel when you walk up to them. Ms. Ivey witnessed people try to avoid the canvassers as they were walking up to patrons at the farmers market and patrons told them that they wouldn't sign. The canvasser told Ms. Ivey that during an 8-10 hour shift the two of them normally get 40 signatures with about 75-80% verified.

46. To obtain a signature on a petition, a solicitor must hand the petition and a pen to a prospective signer and then retrieve the signed petition. Such an exchange is impossible under the social distancing guidelines from the Centers for Disease Control, which provide, in part:

Social distancing, also called “physical distancing,” means keeping a safe space between yourself and other people who are not from your household.

To practice social or physical distancing, stay at least 6 feet (about 2 arms’ length) from other people who are not from your household in both indoor and outdoor spaces.

Social distancing should be practiced in combination with other [everyday preventive actions](#) to reduce the spread of COVID-19, including [wearing cloth face coverings](#), avoiding touching your face with unwashed hands, and frequently washing your hands with soap and water for at least 20 seconds.

<https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html> (last accessed July 6, 2020)

CLAIMS FOR RELIEF

COUNT ONE – FIRST AMENDMENT – DECLARATORY AND INJUNCTIVE RELIEF

47. Ms. Ivey incorporates the allegations contained in Paragraphs 1-46 as if fully set forth herein.

48. Under current circumstances, the requirements of EL §§ 5-703(d), 5-703(e), and 5-703(f) that Ms. Ivey submit petition signatures from 1% of the total number of registered voters in

Maryland's Seventh Congressional District by August 3, 2020, violates the rights guaranteed to her by the First Amendment to the United States Constitution and the Fourteenth Amendment to the United States Constitution.

49. A real and actual controversy exists between the parties.

50. The Defendant has less restrictive means by which SBE's interests can be met.

51. Ms. Ivey no adequate legal, administrative, or other remedy by which to prevent or minimize the continuing and irreparable harm to her constitutional rights.

52. Ms. Ivey has no adequate remedy at law other than this action for declaratory and equitable relief.

53. Ms. Ivey is suffering irreparable harm as a result of the violations complained of herein, and that harm will continue unless declared unlawful and enjoined by this Court.

WHEREFORE, Ms. Ivey requests that the Court:

a. Issue a preliminary injunction on an expedited basis, and ultimately a permanent injunction, prohibiting the strict enforcement of EL §§ 5-703(d), 5-703(e), and 5-703(f), and directing the Defendant to place Ms. Ivey's name on the 2020 General Election ballot for the office of United States of Representative from Maryland's Seventh Congressional District if she submits a petition with 2,532 signatures of voters registered in Maryland's Seventh Congressional District on or before August 3, 2020; or, in the alternative (ii) directing the Defendant to extend the date for submission of signatures from August 3, 2020, to at least Tuesday, September 8, 2020.

b. Issue a declaratory judgment stating that in light of the current public health emergency caused by COVID-19, the orders of Governor Hogan and local Maryland jurisdictions requiring citizens to remain in their homes and restricting public gatherings, and the Centers for Disease Control social distancing guidelines, Maryland's signature requirements for independent

candidates cannot be constitutionally enforced under the First Amendment, and that the Defendant must accept Ms. Ivey's candidacy petition if the petition contains the signatures of at least .005% of the registered voters in Maryland's Seventh Congressional District.

c. Order the Defendants to pay to Plaintiffs their costs and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988.

d. Grant such other relief as this Court deems just and appropriate.

Dated: July 7, 2020

Respectfully submitted,

/s/ H. Mark Stichel
H. Mark Stichel, Bar No. 02939
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Baltimore, Maryland 21202
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Counsel for Amber Ivey, Plaintiff

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Maryland State Board of Elections
151 West Street, Suite 200
Annapolis, Maryland 21401-0486

Defendant.

Civil Action No. _____

* * * * *

VERIFICATION OF AMBER IVEY

I, Amber Ivey, hereby affirm under the penalties of perjury:

1. I am over the age of 18 and competent to testify.
2. I am the Plaintiff in the above-captioned case.
3. I have read the factual allegations in the foregoing Verified Complaint.
4. Based upon my personal knowledge, the factual allegations are true and correct.

Dated: July 7, 2020

Amber Ivey